



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAROK**

**HCCRA NO.68 OF 2017**

**ANNAH NYAMUKONYO.....APPEALANT**

**-VERSUS-**

**STATE.....RESPONDENT**

**RULING**

1. The applicant has applied for bail pending appeal. She has set out 10 grounds in support of her application. Additionally her application is anchored in her supporting affidavit dated 9/2/2017.
2. The applicant was convicted of obtaining registration by false pretences and sentenced to one year imprisonment in count 1. In count 2, she was convicted of a conspiracy to commit a misdemeanour and was sentenced to one year imprisonment and in count 3, she was convicted of concealing a title deed and was sentenced to one year imprisonment. The sentences were ordered to run concurrently. The sentences were ordered to run concurrently. She has filed an appeal in this court.
3. In her 10 grounds which she has set out on the face of the notice of motion, she has stated that she is aged 79 years old and that she is a sole breadwinner of 7 grand children, some of whom are orphans. She has also stated that her health has deteriorated since she was imprisoned and it is likely to deteriorate further. Furthermore, she has also stated that there is a possibility of a substantial delay in the hearing and determination of her appeal in view of the fact that the record of appeal has not been prepared.
4. Additionally, she has stated that she complied with her conditions of bail during her trial and will do so if released on bail pending appeal. Finally, she has stated that her appeal has a high probability of success and that the offences with which she is convicted do not involve personal violence.
5. In a 13 paragraph supporting affidavit, the applicant has deponed, amongst other matters, to the following. She has deponed that there is a possibility of substantial delay in the hearing and determination of her appeal, since the record of appeal has not been prepared.
6. She has also deponed that her appeal has a high probability of success and that the offences in regard to which she has been convicted do not involve personal violence. Furthermore, she has deponed that she is aged 79 years and she is of poor health in particular she is suffering from arthritis. She has annexed supporting medical documents. She has also deponed that if released on bail pending appeal, she will comply with these terms and conditions of her release.
7. Mr. Mukofu for the respondent does not oppose the applicant's application.
8. In the light of the affidavit evidence and the applicable law, I find the following to be the issues for determination.

First, an applicant for bail pending appeal must demonstrate that the appeal has a high probability of success. Secondly, such an applicant must also demonstrate that there are unusual or exceptional circumstances in her appeal.

9. Ms Kudate, counsel for the applicant made oral submissions urging the court to release her client on bail based on the ground that she is 79 years old. She also submitted that the offence with which the applicant has been convicted are misdemeanours. Additionally, she also submitted that the applicant is a sickly lady, who is suffering from arthritis and that she is the sole breadwinner of 7 grand children. She further submitted that the applicant was on bail during her trial in the lower court and religiously complied with her bail terms. She has also submitted that she will comply in the same manner if released on bail by this court. Finally, she submitted that the grant of bail pending appeal will enable her to continue receiving treatment.

10. Mr. Mukofu for the respondent did not oppose the release for the applicant on bail pending appeal purely on humanitarian grounds in view of her advanced age and medical condition.

11. I have considered all these matters and I find that the applicant has not demonstrated that her appeal has a high probability of success. The age of the appellant, her poor health, her religious compliance with the trial bail terms and the fact that she is convicted of misdemeanours do not constitute exceptional or unusual circumstances to justify her release on bail pending appeal.

12. In the circumstances, her application is hereby dismissed.

Ruling delivered in open court this **20th day of February, 2017** in the presence of Ms Kudate for the Appellant and Mr. Mukofu for the Respondent.

**J. M. BWONWONGA**

**JUDGE**

**20/2/2017**